

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 328 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GHANSHYAMBHAI VITHALBHAI MISTRI

Versus

STATE OF GUJARAT

Appearance:

MR MJ DAGLI for Petitioners

MR SP DAVE, LD. APP for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 23/03/98

ORAL JUDGEMENT

1. Appellant no.1 - Ghanshyambhai Vithalbhai Mistri, aged about 27 years, appellant no. 2 - Sureshbhai Vithalbhai Mistri, aged about 20 years, appellant no. 3 Kantaben, wife of Vithalbhai Arjanbhahi, aged about 48 years and appellant no. 4 - Niruben, daughter of Vithalbhahi Arjanbhahi, aged about 22 years were accused nos. 1, 2, 3 and 4 respectively in Sessions Case No.

105 of 1995. Their relation with deceased Daksha was respectively that of husband, husband's brother, mother-in-law and sister-in-law.

2. Dakshaben was married with the accused no.1 Ghanshyambhai about 2 years before the date of her death. She was being ill-treated in the matter of cooking and in the matter of attending household work. She was also being beaten by accused no.1. All the accused persons were taunting and insulting her in respect of the household work regarding cooking as also other household work. Consequently she was required to go back to her parents' place on a couple of occasions and on one of the occasions she had to live at her parents' place for a period of about 5 months. 15 days before the date of incident she had an occasion to go to inquire of her father's health since he had sustained injuries on account of a fall from a tractor. On that occasion also she had complained of her cruel treatment at her matrimonial home. Still however, she was sent back with the accused no.1. It so happened that on 5/4/1995 she had some talk with her husband (accused no. 1) for allowing her to go to village Vanda, her parents' place and on that occasion accused no. 1 had given her 2 to 3 slaps and accused nos. 2 to 4 had also abused her. Disturbed on account of such treatment she decided to put her life to an end. She, therefore, poured kerosene on herself and set her ablaze. The neighbouring occupiers collected at the scene of offence and she was accordingly taken to the Public Health Centre at Gariadhar. Upon the receipt of the information the P.S.O. Gariadhar Police Station sent Head Constable Bhikhubhai at the Public Health Centre at Gariadhar. The said Head Constable Bhikhubhai had recorded the complaint of Dakshaben, who was then alive. The Executive Magistrate was also informed for going to the Public Health Centre and to record dying declaration of Dakshaben. Accordingly, dying declaration was recorded. She was then referred to Sir Takhatsinhji Hospital at Bhavnagar. However, Dakshaben succumbed to her burn injuries in the hospital at Bhavnagar. Necessary investigation was carried out and the case was ultimately committed to the Sessions Court. Charge was framed at exh. 5. The accused persons pleaded not guilty to the charge. After recording the evidence adduced by the prosecution and after recording the statements of the accused persons u/S. 313 of the Code of Criminal Procedure, 1973 and after hearing the submissions made on behalf of the rival parties, the Ld. Addl. Sessions Judge, Bhavnagar, by his impugned judgment and order dated 12/3/1996 in Sessions Case No. 105 of 1995 convicted accused persons

of the offences punishable u/S. 306 read with sec. 114 of the Indian Penal Code (for short 'IPC'), as also u/S. 498A of the IPC and sentenced them to suffer rigorous imprisonment (RI) as per following particulars :-

Accused No.1 - RI for a period of 5 years and fine of Rs.2,000/- in default RI for 4 months for the offence punishable u/S. 306 r/w sec. 114 of the IPC. He is also sentenced to suffer RI for 2 years for the offence punishable u/S. 498A r/w. sec. 114 of the IPC and to pay fine of Rs.1,000/- and in default to suffer RI for 2 months.

Accused nos.

2, 3 and 4 - They are sentenced to suffer RI for 4 years and to pay fine of Rs.1,000/- and in default to suffer RI for 2 months for the offence punishable u/S. 306 r/w. sec. 114 of the IPC and to suffer RI for 18 months and to pay fine of Rs.500/- each in default to suffer RI for one month for the offence punishable u/S. 498A of the IPC.

3. It is the aforesaid impugned judgment and order of conviction and sentence which has been challenged in this appeal.

4. I have heard Mr. M.J. Dagli, learned advocate for the appellants and Mr. S.P. Dave, Ld.A.P.P. for the State. Before the submissions made by both of them are considered a synopsis of the evidence which has been placed on record might be made.

5. The prosecution has placed on record following documents :-

- i. FIR Exh. 42
- ii. Inquest Panchnama exh. 14
- iii. A yadi with regard to performing of post mortem exh. 29
- iv. P.M. Report exh. 30
- v. Communication despatching Muddamal Articles to FSL Exh. 51
- vi. Report of F.S.L. (Forensic Science Laboratory) Exh. 52
- vii. Another report of F.S.L. exh.53-54
- viii. Panchnama regarding the arrest of the accused exh. 15-16

- ix. Medical case papers exh. 32
- x. Panchnama regarding the place of incident exh. 35
- xi. Yadi sent to the Executive Magistrate for the purpose of recording of D.D. Exh. 37
- xii. Dying declaration exh. 38
- xiii. Note of information sent by the Medical Officer exh. 21
- xiv. Yadi sent alongwith the complaint exh. 43
- xv. A true copy of entry in the station diary bearing entry no. 1395 exh. 57
- xvi. A true copy of entry regarding the offence having been registered exh. 58.

6. Following witnesses have been examined by the prosecution :-

- i. P.W. No. 1 Ratilal Kanjibhai, exh. 23
- ii. P.W. No.2 Shardaben Bhikhabhai, exh. 24
- iii. P.W. No.3 Manjulaben Navnitbhai, exh. 25
- iv. P.W. No.4 Dr. Haroonbhai Suleman, exh. 28
- v. P.W. No.5 Dr. Ramniklal Kalabhai, exh. 31
- vi. P.W. No.6 Jitubhai Dhanajibhai (regarding the Panchnama exh. 35), exh. 34,
- vii. P.W. No.7 Manjibhai Bijalbhai, exh. 36
- viii. P.W. No.8 Admabhai Momahdbhai, exh. 39, (Panch witness).
- ix. P.W. No.9 Bhikhalal Haribhai Gohel, exh. 40
- x. P.W. No.10 Lilaben Ratilal, exh. 44
- xi. P.W. No.11 Shaileshbhai Ratilal, exh. 46
- xii. P.W. No.12 Savitaben Gopalbhai, exh. 47
- xiii. P.W. No.13 Jagdishbhai Raghavbhai, exh. 48
- xiv. P.W. No.14 Husenbhai Usmanbhai, exh. 50
- xv. P.W. No.15 Jitubhai Pratapsinh Jhala, exh.56.

It might be noted that upon appreciation of the aforesaid evidence, more particularly the evidence of the relatives from the side of the parents of deceased Dakshaben, complaint and dying declarations the Ld. Addl. Sessions Judge has recorded the conviction and sentence impugned in this appeal. Hence, it would be appropriate to note what these pieces of evidence convey.

7. P.W. No.1 Ratilal Kanjibhai, father of deceased Dakshaben, has testified to the facts of the prosecution case, which have bearing upon the cruel treatment of deceased Dakshaben at the hands of her husband, mother-in-law, brother-in-law and sister-in-law. He has deposed that her daughter Dakshaben was tired and disturbed on account of the cruel treatment she received from the accused persons in the matter of work of cooking and on account of she having been beaten from time to

time. He has also narrated the incident when Dakshaben had been to his place on the last occasion. The witness has been cross-examined at length and he has in terms stated that on all occasions when his daughter Dakshaben was his at place, he was persuading her to go to her husband's place as that would be proper. On a close scrutiny of the evidence of this witness it would clearly appear that the complaint which Dakshaben made to him was two fold. She was ill-treated by her husband in the form of she having been abused and beaten by him. She was ill-treated in the form of she having been taunted in the matter of cooking and other household work by accused nos. 2, 3 and 4. On a close scrutiny of evidence of other witnesses from the family of P.W. No. 1 Ratibhai Kanjibhai, it would appear that the nature and manner of ill-treatment of deceased Dakshaben was almost of similar pattern with a rider that there has been admission on the part of P.W. No. 10 - Lilaben Ratibhai, exh. 44, mother of deceased Dakshaben, that Dakshaben was weak at cooking as well as at other household work. From this it has been submitted that it was quite natural on the part of atleast accused nos. 2, 3 and 4 to make grievance about the food which Dakshaben used to cook and the other household work which she used to attend at her matrimonial home. However, that would not warrant for accused no. 1 to abuse Dakshaben so frequently, that would also not warrant accused no. 1 to beat her so frequently. The evidence clearly speaks about continuous ill-treatment of Dakshaben at the hands of accused no.1 in the manner noted hereinabove. In so far as the accused nos. 2, 3 and 4 are concerned, it is no-doubt true that there is no specific instance of any of the 3 accused having had beaten Dakshaben on any occasion. There is clear evidence about these 3 accused frequently taunting Dakshaben with regard to her attendance of aforesaid household work. In the context of the aforesaid evidence of the witnesses from the side of Dakshaben's parents the dying declaration which appear in the complaint exh. 42 and dying declarations exh. 38 might be noted. The complaint has been recorded by the Head Constable Bhikhabhai Haribhai Gohil, P.W. No. 9 exh. 40. This complaint appears to have been recorded at about 8.00 p.m. on 5/4/1995, the day of the incident. It has been noted in the complaint that at about 5.00 O'clock in the after-noon Dakshaben was at home. She had a talk with regard to going to her parents' place at village Vanda, some time during afternoon, with her husband and a quarrel ensued in that respect resulting in her husband (accused no.1) giving 2 to 3 slaps to her. Her mother-in-law, sister-in-law and brother-in-law (accused nos. 2 to 4) had also abused her. She has

further stated that she was being ill-treated by all the 4 accused persons in the matter of household work and the work of cooking and they were causing physical and mental torture to her. She gave information with regard to her such treatment 15 days before the date of incident when she had gone to her parents' place. Since she was disturbed on account of the incident that took place in the after noon, she decided to commit suicide for getting relieved from the ill-treatment she was facing. She accordingly took out and poured kerosene of her own and set her ablaze when her mother-in-law and sister-in-law were present and ultimately her husband had taken her in a tempo for her treatment to the hospital at Gariadhar. Tired of her frequent ill-treatment, both physical as well as mental, in the matter of cooking and household work at the hands of the accused persons she had burnt herself.

8. It has been submitted in respect of the aforesaid complaint that the woman having sustained nearly 99% of burns and having even burnt her hands in the process could not be said to be in such a mental condition as to narrate the facts in such detail as can be found from the complaint exh. 42. In this respect if the medical evidence is taken into consideration it would become clear that Dakshaben was conscious after she was admitted to Gariadhar Public Health Centre. Even the medical case papers indicate that the treatment was prescribed to her and she had herself stated before the doctor that she had attempted to commit suicide by burns. Now if Dakshaben was not conscious or was of not such a mental condition as to disclose the facts about how she sustained burns, it would not have been possible for her to state before the doctor immediately upon her admission to the Public Health Centre the fact that she had attempted to commit suicide. Exh. 32 clearly indicates the words "suicidal Burns" when the patient was admitted in the Medical Centre at about 7.45 p.m. on 5/4/1995. She was in the hospital in the Public Health Centre of Gariadhar till upto 8.30 p.m. and all throughout she had been conscious as can be seen from the evidence of the doctor.

9. Soon after the complaint was recorded the Executive Magistrate goes to the Public Health Centre for recording of dying declaration and the dying declaration is placed on record at exh. 38. In this dying declaration also she has repeated her stand with regard to her ill-treatment at the hands of the accused persons, more particularly accused no.1 - Ghanshyambhai Vithalbhai Mistri. The first question is as to why she was brought to the Medical home (public health centre) and Dakshaben

has replied that the accused persons (by describing them according to their relations with her) had been giving ill-treatment to her and causing her physical and mental torture from time to time for the last about 2 years, she was tired and, therefore, she had burnt herself by pouring kerosene and lighting the match stick. In reply to the second question, when she was married, she has stated that she was married before about 2 years and she did not have any child. In reply to the third question as to what is the name of her husband, she has replied that he is Ghanshyambhai Vithalbhai, doing work of diamond (cutting). In reply to the last question as to whether she wanted to say anything else, she replied that she did not want to say anything else (by using one word 'no'). Now this dying declaration was recorded at about 8.45 p.m. on the same day.

10. Her thumb impression on both the aforesaid documents has been identified by witness Jagdishbhai Raghavbhai, who has been examined as P.W. No. 13 at exh. 48. He is not a relative from the side of Dakshaben's parents. It is true that his statement was not recorded, but the fact of identification of thumb mark of Dakshaben appears on the face of the aforesaid two documents and the witness has not denied his signature. Hence, with whatever has been deposed to by Jagdishbhai Raghavbhai P.W. 13 Exh. 48 it has clearly been established by the prosecution that the complaint and the dying declaration were recorded and Dakshaben had the occasion of applying her thumb mark on the said documents.

11. The most important circumstance which deserves consideration while appreciating the submissions made by Mr. Dagli is that at the time when the complaint was recorded as also at the time when the dying declaration was recorded, no relative from the side of the Dakshaben's parents was present and who were present were relatives and/or friends and neighbours of accused persons. Therefore, there is no possibility of any influence or pressure having entered in the recording of complaint and/or the dying declaration. In that view of the matter, the Ld. Addl. Sessions Judge has rightly accepted the dying declaration as also the statement made by Dakshaben in her complaint as the pieces of evidence which would lend support to the prosecution case at least on the question of cruelty as envisaged by section 498 A of the IPC.

12. In so far as section 306 read with sec. 114 of the IPC is concerned, the evidence requires careful

scrutiny. As stated above, the prosecution evidence clearly indicates the physical cruelty as well as mental cruelty in the form of giving beating and abuses by accused no.1 - Ghanshyambhai Vithalbhai Mistri. However, having gone through the prosecution evidence at length I do not find any specific instances of beating in so far as accused nos. 2, 3 and 4 are concerned. In fact, there is no allegation of beating as against the female accused persons, accused Kantaben and accused Niruben. In so far as the accused Sureshbhai there is one incident of giving a slap to the deceased Dakshaben and that too in a very vague manner. No particulars with regard to such incident are forthcoming. Therefore, if the prosecution evidence is examined in its true and correct perspective, it would clearly appear that the prosecution has failed to establish beyond reasonable doubt any incident of physical cruelty in so far as accused nos. 2, 3 and 4 are concerned. The allegations appearing in the complaint as well as in the dying declaration are quite general and it is obvious that Dakshaben would not be in a position to specify the incidents actually attributable to the accused persons separately. However, even on careful consideration of complaint as well as dying declaration it would clearly appear that her real grievance with regard to physical cruelty was against accused no.1 - Ghanshyambhai Vithalbhai Mistri, her husband. This can be seen from the complaint exh. 42 where she specifically speaks about her husband having given her 2 to 3 slaps on the day of the incident. Allegations in the rest of the complaint are quite general in nature and it could not be spelt out from the complaint as well as the dying declaration that accused nos. 2, 3 and 4 were also beating Dakshaben. It might be noted that physical ill-treatment at the hands of the husband would have a great set back and impact on the mind of the wife. In fact, that might in all probability provide an immediate cause for putting an end to one's life. This is a case where this appears to have happened in fact. Hence, proximate cause for Dakshaben to put an end to her life would be her physical and mental torture at the hands of accused no. 1. Rest of the accused persons were no-doubt taunting her in the matter of household work and in the matter of cooking. However, that by itself would not lead her to commit suicide. This conclusion flowing from the aforesaid evidence might well find support from other evidence which has been placed on record. It might be noted from the evidence of P.W. No.10 Lilaben Ratilal exh. 44, mother of deceased Dakshaben that Dakshaben was not well verse in the work of cooking and she was also not well verse in the household work. This would lend support to the fact that

the sufferance of Dakshaben was on account of her inadequate expertise in the work of cooking and other household work.

13. One neighbour has been examined by the prosecution. She is P.W. No.2 Shardaben Bhikhabhai, exh. 24. It is true that ordinarily the neighbour of accused persons in such cases would hardly give any positive evidence that would support the prosecution. At the same time there are certain facts which are brought to light by such witness and they need appropriate consideration in evaluating the prosecution evidence. Witness Shardaben Bhikhabhai has deposed that accused Kantaben had been to her house at about 4.30 in the after-noon. After the witness was declared hostile her statement before the police was confronted to her. No-doubt she has denied having made such statement, but the statement would indicate that the witness and Kantaben were in the house of the witness and were talking when accused Niruben rushed running there saying that Dakshabhabhi had poured kerosene. It would, therefore, clearly appear that Kantaben was in the company of witness Shardaben at the time of the incident. Accused Niruben had also rushed to call accused Kantaben on account of she having come to know that Dakshaben had poured kerosene and attempted to burn herself. This conduct of Niruben would indicate that in all probabilities she might not have behaved in a manner that would have immediately led Dakshaben to commit suicide. These circumstances assume importance in the light of nature of ill-treatment which accused nos. 2, 3 and 4 were alleged to be giving to Dakshaben. Therefore, the prosecution has failed to establish beyond reasonable doubt any proximate cause which would connect accused nos. 2, 3 and 4 with commission of suicide by Dakshaben. The nature of the ill-treatment attributed to them is not such as would lead to connect them with the offence punishable u/S. 306 r/w. section 114 of the IPC. The aforesaid facts and circumstances flowing from the prosecution evidence would indicate that these accused persons did not provide such a proximate cause as would have prompted Dakshaben to commit suicide. It might be noted from the evidence set-out hereinabove that the proximate cause for Dakshaben to commit suicide was refusal on the part of accused no. 1 to allow her to go to her parents' place so soon after she had returned therefrom. This resulted in quarrel between Dakshaben and accused no.1 and accused no. 1 abusing Dakshaben and beating her. There does not appear to be any specific cause attributable to any of the accused nos. 2, 3 and 4. Under such circumstances, the presumption available

u/S. 113A of the Evidence Act would attach to the implication of accused no.1, but would hardly attach to the implication of accused nos. 2, 3 and 4 in so far as offence punishable u/S. 306 r/w. section 114 of the IPC is concerned.

14. Hence, in the facts of the case and for the reasons noted above, this appeal deserves to be allowed in part. Following order is, therefore, passed :-

In the result, this appeal is partly allowed. The conviction and sentence of accused nos. 2, 3 and 4 (appellants nos. 2, 3 and 4 herein) respectively Sureshbhai Vithalbhai, Kantaben, wife of Vithalbhai Arjanbhai and Niruben, daughter of Vithalbhai Arjanbhai u/S. 306 read with sec. 114 of the IPC are hereby quashed and set aside. Their conviction u/S. 498A read with sec. 114 of the IPC will, however, stand confirmed. They have undergone sentence of one month and 27 days (appellants nos.3 and 4 - Kantaben and Niruben) and two months and 11 days (appellant no. 2 Sureshbhai). Under the circumstances stated above, their substantive sentence is reduced to that which they have undergone and the fine which has been imposed by the Ld. Addl. Sessions Judge, Bhavnagar is increased to Rs. 1500/- for each of the accused nos. 2, 3 and 4 (totalling to Rs.4500/-). Office to accept the amount of fine immediately.

In so far as the conviction and sentence of accused no. 1 is concerned, the same shall stand confirmed.

PVR cr.32896j.